LARREMORE PETROLEUM PARTNERSHIP

IBLA 85-463 Decided September 25, 1986

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, denying petition for reinstatement of noncompetitive oil and gas leases NM-A 50832 and NM-A 50847.

Affirmed.

1. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Termination

A petition for reinstatement of noncompetitive oil and gas leases filed pursuant to sec. 31(c) of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(c) (1982), is properly denied where the payments were mailed to BLM after the lease anniversary dates and the illness asserted as justification for late payments is not substantiated as being the proximate cause of the late payments.

APPEARANCES: David R. Hopple, Larremore Petroleum Partnership, for appellant.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Larremore Petroleum Partnership (Larremore) appeals from a February 11, 1985, decision of the New Mexico State Office, Bureau of Land Management (BLM), denying appellant's petition for reinstatement of noncompetitive oil and gas leases NM-A 50832 and NM-A 50847.

Pursuant to section 3 of the Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 352 (1982), oil and gas lease NM-A 50832 was issued effective July 1, 1983, and oil and gas lease NM-A 50847 was issued effective August 1, 1983. 1/ By separate notices dated November 9, 1984, BLM advised Larremore both leases had terminated for failure to pay the annual rentals in a timely manner because the rental for lease NM-A 50832 (due July 1, 1984) was not received until July 13, 1984, and the rental for lease NM-A 50847 (due August 1, 1984) was not received until August 20, 1984. The record indicates the rental checks for leases NM-A 50832 and NM-A 50847 were dated July 10 and August 17, 1984, respectively. BLM's notices also advised Larremore it could file a petition for reinstatement of the leases under either section 31(c) of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(c) (1982), or "Title IV of the Federal Oil and Gas Royalty Management Act of 1982 (Public Law 97-451)."

1/ Both leases were assigned to Larremore effective Nov. 1, 1983.

On November 26, 1984, Larremore filed separate petitions for reinstatement of each lease pursuant to section 31(c) of the Mineral Leasing Act, as amended, stating, "Our partner was ill during the period when the rental was due, and since he was the only recipient of all mail from BLM, the other two partners, including myself, were not made aware of the rental payment due." In its February 11, 1985, decision, BLM denied both petitions because "the lessee did not show reasonable diligence in mailing the payment[s] or a justifiable excuse for the delay[s] in payment."

In its statement of reasons for appeal, appellant submits a copy of a March 8, 1985, letter from Roger Larremore to Martha A. Rivera, Chief, Mineral Leasing Unit 1, BLM, which states, "During the year 1984, I was the managing partner of Larremore Petroleum Partnership. From June 20, 1984, until August 5, 1984, I was ill and unable to perform business affairs. During which time, I was under a doctors care." The letter also states, "My doctor, is presently out of town and when he returns, I shall have him forward verification of my illness." Appellant also submits a letter of March 21, 1985, from David Hopple, one of the partners in Larremore, addressed "To Whom It May Concern," which concludes "because all partnership matters were dependent upon Roger's attention, and all the records were at his office, when he became ill, there was no one to take care of his affairs except his wife Karen, who herself had no knowledge about Larremore Petroleum Partnership."

[1] Section 31(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1982), provides in part that "upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law." Such lease, however, may be reinstated under section 31(c) of the Mineral Leasing Act, as amended, if the rental was paid within 20 days after the anniversary date and upon a showing by the lessee the failure to pay on or before the anniversary date "was either justifiable or not due to a lack of reasonable diligence on the part of the lessee." See also 43 CFR 3108.2-1(c) (1982).

We first address the question of whether appellant has shown its failure to timely pay the rentals was not due to a lack of reasonable diligence. At the time the leases terminated, 43 CFR 3108.2-1(c)(2) provided that reasonable diligence "normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment." As indicated earlier, both checks were dated after the anniversary dates. Appellant does not deny the rental payments were sent after the due dates. Therefore, we conclude appellant's failure to pay timely was due to a lack of diligence.

The remaining question is whether appellant's late payments were justifiable. Larremore asserts the illness of a partner responsible for paying the rentals serves to justify the late payments. In William F. Branscome, 81 IBLA 235, 237 (1984), we considered the circumstances under which illness may justify late payment:

In certain instances, we have held that illness justified a late payment. Thus, in Joanne F. Bechtel, 76 IBLA 1, 3 (1983), we cited two cases:

> [I]n Billy Wright, 29 IBLA 81 (1977), we held that the illness of the appellant's brother, who was suffering with terminal cancer and subsequently died, during August 1976 was a circumstance which justified the appellant's failure to pay the annual rental on the lease anniversary date, September 1, 1976. We noted that because the appellant was "distraught during this time * * * [he] was unable to give full attention to his business affairs." Id. at 82. Similarly, in C. H. Winters, [34 IBLA 350 (1978)] we held that the illness of a friend, whom the appellant visited on an out-of-town business trip, stayed with, and cared for until November 1, 1977, the lease anniversary date, was a circumstance which justified the late rental payment.

In both instances, the illness had so disrupted the lessee's normal routine that the party petitioning for reinstatement was unable to conduct his usual affairs.

In William F. Branscome, supra, we concluded the illness in that case did not justify late payment and stated:

> An appellant who wishes to establish that the untimely payment was caused by circumstances beyond his control must substantiate this allegation with sufficient proof such that this Board can conclude that the circumstances actually existed and were the proximate cause for the tardy payment. See 43 CFR 3108.2-1(c)(2). The statement of reasons filed by appellant merely stated that the reason for the late payment was "due to our inability to sign the check because of absence from the country. We were detained from returning due to illness in the middle of March." No further explanation was given and there is no indication that the illness so disrupted appellant's routine that he was unable to conduct his affairs at the time payment was due. There is no way we can tell the duration of this illness, its seriousness, or even its actual existence. This Board cannot accept such unsupported allegations, as to do so invites abuse of the reinstatement regulations.

In the present case, the nature or seriousness of the illness is unknown. In his March 8, 1985, letter referenced earlier in this decision, Roger Larremore stated he was ill and under a doctor's care from June 20 until August 5, 1984, and would have his doctor forward verification of his illness. The record does not indicate receipt of such verification. As in

Branscome, we cannot accept such broad unsupported allegations and find appellant has not shown the failure to make timely payments was proximately caused by circumstances outside appellant's control and, hence, justifiable. We therefore conclude BLM properly denied appellant's petition for reinstatement of oil and gas leases NM-A 50832 and NM-A 50847.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

John H. Kelly
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Anita Vogt
Administrative Judge
Alternate Member